

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Jason Miller,

Case No. 2:23-cv-00353-JAD-EJY

Plaintiff

V.

State of Nevada,

Defendant

Order Dismissing and Closing Case

Plaintiff Jason Miller brings this civil-rights lawsuit to redress constitutional violations

10 that he claims he suffered in connection with his state criminal case. On September 13, 2023,

11 this court dismissed Miller’s claims with leave to amend by October 13, 2023,¹ and gave him

12 until that same deadline to either pay the full \$402 filing fee or apply to proceed *in forma*

¹³ *pauperis* in this action.² The court warned Miller that this case would be dismissed and closed.

14 he failed to file an amended complaint and either pay the filing fee or apply for *in forma*

¹⁵ || pauperis status by that deadline.³ Miller did not file an amended complaint and either pay the

16 filing fee or apply for *in forma pauperis* status by that deadline, nor did he move for an extension.

17 | of time to do so.

The law permits a district court to dismiss an action based on a party's failure to comply

¹⁹ with a court order.⁴ In determining whether to dismiss an action on this ground, the court must

¹ ECF No. 3 at 7.

$|^2 Id.$

3 Id.

⁴ See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring amendment of complaint).

1 consider: (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
 2 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
 3 disposition of cases on their merits; and (5) the availability of less drastic alternatives.⁵

4 The first two factors, the public's interest in expeditiously resolving this litigation and the
 5 court's interest in managing its docket, weigh in favor of dismissal of the plaintiff's claims. The
 6 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
 7 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
 8 ordered by the court or prosecuting an action.⁶ The fourth factor—the public policy favoring
 9 disposition of cases on their merits—is greatly outweighed by the factors favoring dismissal.

10 The fifth factor requires the court to consider whether less drastic alternatives can be used
 11 to correct the party's failure that brought about the court's need to consider dismissal.⁷ Courts
 12 "need not exhaust every sanction short of dismissal before finally dismissing a case, but must
 13 explore possible and meaningful alternatives."⁸ Because this action cannot proceed until and
 14 unless plaintiff files an amended complaint, the only alternative is to enter a second order setting
 15 another deadline. But the reality of repeating an ignored order is that it often only delays the
 16 inevitable and squanders finite resources along the way. The circumstances here do not indicate
 17 that this case will be an exception because the plaintiff ignored the first order. Setting another
 18
 19

20⁵ *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
 21 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

22⁶ See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

23⁷ *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less
 drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor);
accord Pagtalunan v. Galaza, 291 F.3d 639, 643 & n.4 (9th Cir. 2002).

⁸ *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986).

1 deadline is not a meaningful alternative given these circumstances. So the fifth factor favors
2 dismissal.

3 Having thoroughly weighed these dismissal factors, I find that they weigh in favor of
4 dismissal. IT IS THEREFORE ORDERED that **THIS ACTION IS DISMISSED** for failure to
5 file an amended complaint by the court-ordered deadline, leaving no claims pending. The Clerk
6 of Court is directed to **ENTER JUDGMENT** accordingly and **CLOSE THIS CASE**. **No other**
7 **documents may be filed in this now-closed case.**

8 Dated: October 23, 2023

9 
U.S. District Judge Jennifer A. Dorsey

10
11
12
13
14
15
16
17
18
19
20
21
22
23